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No. 550

In the Supreme Court of the United States

OCTOBER TERM, 1964

RONALD L. TODD, ET AL., PETITIONERS

v.

JOINT APPRENTICESHIP COMMITTEE, ETC., AND BETHLEHEM STEEL COMPANY, AND LOCAL UNION NO. 1, ETC., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

ARCHIBALD COX,
Solicitor General,
Department of Justice,
Washington, D.C., 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 380

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v.

JOINT APPRENTICESHIP COMMITTEE, ETC., AND BETHLEHEM STEEL COMPANY, AND LOCAL UNION NO. 1, ETC., ET AL.

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By order of the Court, dated November 9, 1964, the Solicitor General was invited to express the views of the United States with respect to this case. For the reasons outlined below, we believe that the decision of the court of appeals, ordering the complaint dismissed on the ground of mootness, was erroneous, at least with respect to respondents Joint Apprenticeship Committee (the Committee) and Iron Workers Bridge and Structural Union, Local No. 1 (the Union).

Petitioners are Negroes who alleged that, despite a "pronounced aptitude and interest in the iron workers craft" and physical ability "to perform the required

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work," they—and Negroes generally—have been excluded from the craft of structural iron workers (Union App. 6–7).[1] The complaint particularly focused on petitioners' exclusion from employment by Bethlehem in connection with the construction of the new United States Courthouse and Federal Office Building in Chicago, Illinois (Union App. 3), and sought an injunction restraining further performance of the courthouse project until each plaintiff "is duly and regularly employed as an iron workers apprentice" (Union App. 8). Respondents were included among the defendants.[2]

After a hearing, the district court found that the Union and the Committee had discriminated against petitioners by reason of their race (Pet. App. 20a); that this discrimination "could not have been accomplished without the aid and assistance" of the United States Department of Labor (whose Bureau of Apprenticeship had "registered" the Committee's apprenticeship program), the General Services Administration (which administered the contract and paid the contractors for the United States) and the Chicago Board of Education (which furnished classes for the apprenticeship program) (Pet. App. 21a); and that such discrimination was in violation of petitioners'

[1] "Union App." refers to the Appendix to the Brief in Opposition filed by the Union.

[2] Also joined as defendants were the Regional Administrator of the General Services Administration, an official of the Bureau of Apprenticeship of the Department of Labor, the Chicago Board of Education (which conducted classes which formed part of the apprenticeship program), and the prime contractors. These defendants were not parties to the appeal and are not before this Court.

right to equal protection of the law under the Fifth and Fourteenth Amendments (Pet. App. 19a–26a). On October 16, 1963, the district court orally entered a preliminary injunction, requiring the Committee to certify petitioners for indenture as apprentices and to cease discriminating against Negro applicants; requiring the Union to admit petitioners to membership as apprentices and to cease discriminating against Negro applicants, and requiring Bethlehem to employ petitioners as apprentice iron workers (Pet. App. 27a–28a). This order, which was made effective immediately, was stayed on the same day pending appeal (Tr. 938–940).

A week later, on October 23, 1963, Bethlehem's work on the courthouse project was completed. The formal order of the district court, entered on November 8, 1963 and made effective as of the date of the oral order, embodied the substance of the oral order as to respondents; it contained additional provisions as to the other defendants (not parties to this appeal).

The court of appeals held that completion of the courthouse project rendered the case moot, and it remanded to the district court with directions to dismiss the complaint.

1. The decision of the court of appeals was apparently based on the assumption that the sole object of the complaint was to obtain employment on the courthouse project, and that the case accordingly became moot upon completion of that project. Those portions of the district court order which have a continuing effect—the requirements that the Committee certify petitioners for indenture as appren-

tices and that the Union admit petitioners to membership as apprentices—were apparently disregarded by the court of appeals as not "within the scope of the complaint." 332 F. 2d at 247.

We believe that the court of appeals took an unduly narrow view of the complaint. It was alleged that the prime contract for the courthouse project provided that apprentices would be permitted to work only under an apprenticeship program registered with the Department of Labor (Union App. 5).[3] The complaint further alleged that the Committee had refused to certify petitioners as apprentices under the registered apprenticeship program for iron workers in force in Illinois (Union App. 5, 6). And, finally, the complaint sought an order enjoining further performance of the prime contract until petitioners are "duly and regularly" employed as iron worker apprentices (Union App. 8). In view of the wide scope of discretion which a trial court has in fashioning appropriate equitable relief, we do not think that the district court went beyond the scope of this complaint by granting a preliminary injunction which, instead of halting the courthouse project until petitioners were "duly and regularly" employed, ordered respondents to assure their future employment. This included certification of petitioners by the Committee for indenture as apprentice iron workers, and their admission to the

[3] The prime contract, in the alternative, permitted employment of apprentices under a program registered with a State Apprenticeship Council recognized by the Department of Labor. No such State Council was shown to exist in Illinois.

Union as apprentices, neither of which matters was rendered moot by completion of the project.[4]

Because of the nature of the construction industry workers move intermittently from project to project and employer to employer as the work to be performed by their craft on one site is completed and, on another, is begun. The labor practices and relations, however, are continuing. They--and usually the resulting disputes—survive the completion of particular projects. So here the ironworkers' apprenticeship program is continuing; it applies to new work within the union's jurisdiction. The racial discrimination of which plaintiffs complain also appears to be a continuing practice for no Negro has yet been employed as a journeyman or apprentice ironworker. In

[4] Petitioners' purpose to obtain admittance to the structural ironworkers craft as a necessary corollary of employment on the courthouse project is clear in light of the evidence as to the necessity for admittance to the apprenticeship program in order to learn and practice the craft. Petitioners alleged in the complaint that Negroes generally are excluded from the craft (Union App. 7). A Committee official testified that the Committee was established by agreement between the Union and the contractors' representatives, and that any contractor in the area employing ironworkers would be a party to the agreement (Tr. 679–680). Under the Apprenticeship Agreement which ironworker apprentices enter into with the Committee, the Committee undertakes to "furnish continuous employment, insofar as possible", and also agrees to supervise the apprentice's training, sending him to regular classes, giving him periodic tests, and seeing that he works for a number of different contractors so as to gain experience in all the facets of the craft. See Plaintiffs' Ex. 28, JAC Ex. 1, Tr. 389, 645, 667–668.

In short, admittance to the apprenticeship program, which the complaint sought as part of obtaining employment on the courthouse project, was equivalent to admittance to the craft from which petitioners alleged they were excluded as Negroes.

such circumstances it is well settled that the termination of the project on which a controversy first arises does not moot the cause of action. *Carpenters Union* v. *Labor Board,* 341 U.S. 707, 715; *Tobin* v. *Ramey,* 205 F. 2d 606 (C.A. 5), certiorari denied *sub nom. Hughes Construction Co.* v. *Secretary of Labor,* 346 U.S. 925; *Walling* v. *Haile Gold Mines,* 136 F. 2d 102 (C.A. 4); *cf. United States* v. *W. T. Grant Co.,* 345 U.S. 629, 633.

There is clearly a continuing controversy between petitioners, on the one hand, and the Union and the Committee on the other. The relief requested necessarily included certification of petitioners as indentured apprentices, and events have not made this requirement moot. Moreover, the order required the Union and the Committee to cease discriminating against Negro applicants and there was ample evidence that this continuing requirement was necessary to prevent future violations. The district court found that the Union had never had a Negro member (Pet. App. 7a). Likewise, since its establishment in 1952, the Committee had never indentured a Negro as an apprentice ironworker (Tr. 676–677). And continuous attempts by GSA officials in charge of the courthouse project to obtain certification of Negro ironworker apprentices had met with flat rejection (Tr. 182–276). In light of this history, the assertion of the Union and the Committee that they are ready to switch to a merit system (Union Brief 9, Appendix B) is hardly sufficient to moot the case.

2. It is less clear whether the requirement which the district court's order imposed on Bethlehem Steel

Company has been mooted by completion of the courthouse project.[5] There was testimony by a Mr. Pitchford, Bethlehem's Manager of Erection for the Western District (which included Chicago) and an employee in Bethlehem's Erection Department, Western District, since 1950, that he knew of no Negro ever having been employed as a structural iron worker or apprentice (Tr. 750). In addition, a Committee official testified that any contractor employing structural ironworkers in the area would be a party to the agreement establishing the Committee (Tr. 679–680). On the other hand, it is true that there was nothing in the complaint or in the evidence to indicate that petitioners were seeking employment with Bethlehem on any job other than the courthouse project. In the circumstances, we would not urge that there is compelling reason to retain Bethlehem as a party to the litigation.

3. In reaching an appropriate disposition of the case, the Court may wish to consider the prevailing circumstances. As we are advised, the present situation is as follows:

—The Committee has recently revised the standards for admission to the iron workers apprenticeship training program so as to conform to the non-discriminatory criteria required by the Department of Labor for a registered apprentice program. See 29 C.F.R., Part 30.

—On the other hand, it does not appear that any Negro applicant has yet been admitted to the appren-

[5] Both the oral order of October 16 and the later formal order required Bethlehem to employ petitioners as indentured apprentice iron workers, without language limiting the employment to the courthouse project (Pet. App. 28a, 65a–66a).

ticeship program. Petitioners have not been admitted. It is, however, too soon to judge fairly the practical operation of the Committee's new non-discriminatory standards.

—In light of the completion of the federal project and the Committee's adoption of new admission standards which are non-discriminatory on their face, the government can offer petitioners no extra-judicial remedy at this time.

—In July, 1965, however, Title VII of the Civil Rights Act of 1964 will become effective and new administrative and judicial procedures for processing grievances such as those advanced here will become available. See Section 703(d).[6]

In our view the facts just recited do not warrant closing, on the basis of an erroneous ruling concerning mootness, the only avenue of relief now open to plaintiffs against the racial injustice they allege. Racial discrimination affecting training and job opportunities is a singularly destructive evil. On the other hand, the theory of the complaint raises difficult constitutional questions, with far-reaching implications, that ought to be decided only after due deliberation by the lower courts in the light of the new remedies made available by the Civil Rights Act of 1964. We do not discuss these questions because all parties apparently agree that since the court of appeals did not reach the merits, the proper course, if this Court should disagree with the holding as to mootness, would be to follow *Federal Trade Commission* v. *Goodyear*

[6] Except as they may be continuing, the original acts of discrimination particularly charged here would be too stale for the administrative remedies provided in Title VII. See Section 706(d).

Co., 304 U.S. 257, and remand the case to the court of appeals for further proceedings.

It is the submission of the United States, therefore, that certiorari should be granted and the case remanded to the court of appeals.

ARCHIBALD COX,
Solicitor General.

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